

Elections | Appeals Panel Terms of Reference and Procedure

Last updated: 4rd February 2015

Part one – The Appeals Panel

1. Appeals Panel

- a. There will be an Appeals Panel, which shall be composed of three independent people.
- b. The Chair of the Panel shall be appointed by the Panel from within its number.
- c. The panellists must be independent of the parties and the election from which the appeal is derived.
- d. The Appeals panel will have jurisdiction to hear appeals made by candidates who have been directly affected by a decision of the Returning Officer.

2. Over-riding objective

- a. The over-riding objective of the appeals procedure is to enable appeals to be dealt with fairly, justly and free of bias.
- b. Dealing with a case fairly and justly includes:
 - i. Avoiding unnecessary formality and seeking flexibility in proceedings,
 - ii. Ensuring as far as practicable that all are able to participate fully in proceedings, and
 - iii. Avoiding delay, so far as is compatible with properly considering the issues.
- c. The Panel must seek to follow the over-riding objective in following these rules and exercising its powers.
- d. Parties to the Panel must help the Panel further the over-riding objective and co-operate with the Panel generally.

3. Staff participation

- a. The Chair may appoint Staff of the Students' Union to assist the Panel in carrying out any of its functions.
- b. Staff assisting the Panel must not have been involved in the administration of the election from which an appeal is derived.

4. General powers of the Chair as to procedure

- a. The Chair may regulate procedure and give guidance as to the conduct or disposal of proceedings, subject to this Terms of Reference.
- b. In particular, the Chair may:
 - i. Adjourn or postpone a hearing;
 - ii. Permit the amendment or correction of documents;
 - iii. Require a party to produce evidence or information.

5. Striking out of appellant's case

- a. The proceedings of the Panel will be struck out automatically if the appellant fails to comply with a direction which stated that failure to comply with the direction would lead to dismissal.

- b. The proceedings of the Panel will be struck out if the Panel does not have jurisdiction to hear the case. The panel will only be able to consider matters governed by the elections Bye-Law.
- c. The Panel may decide to strike out its proceedings if:
 - i. The appellant has failed to comply with a direction which stated that failure to comply with the direction might lead to dismissal;
 - ii. The appellant has failed to co-operate with the Appeals Panel to such an extent that the proceedings cannot be dealt with fairly and justly;

6. Representatives

- a. A party may appoint to represent them or be accompanied by a friend to represent them in the proceedings.
- b. The representative of a party may do anything that may be done by a party.

7. Evidence

- a. The parties must present a case to answer and must present evidence either orally or in writing or by calling witnesses.
- b. The Chair may give guidance as to issues on which the Panel requires evidence, and the nature of any evidence that is required.
- c. The Chair may limit the number of witnesses who may be heard by the Panel, if in their view these witnesses provide no new evidence to the Panel.
- d. A party shall have access to all the evidence that the other party intends to use in proceedings.

8. Withdrawal

- a. The appellant may at any time withdraw their appeal.
- b. The Returning Officer may at any time accept the appellant's case.
- c. If either the appellant withdraws or the Returning Officer accepts the appellant's case, all proceedings shall terminate and the matter will be dealt with as if the Panel had respectively dismissed the appeal or upheld the appeal.

9. Interpretation and definitions

- a. "Appellant" means the person who has applied for an appeal against the decision of the Returning Officer in relation to an election.
- b. "Party" means either the appellant or the Returning Officer, and "parties" means both the appellant and the Returning Officer.
- c. "Panel" refers to the Appeals Panel constituted under this Terms of Reference.
- d. References to a party include a representative of that party.
- e. Any clerical mistake or other accidental slip or omission shall not invalidate proceedings or a decision of the Panel.

Part two – Procedure

10. Commencement of proceedings

- a. An appeal will commence if following a receipt of a decision of the Returning Officer, the appellant gives notice of their intention to appeal the decision of the Returning Officer to the Panel no later than 12 noon on the following day.
- b. Notice of appeal may only be submitted using the relevant form provided by the Deputy Returning Officer.

- c. A notice of appeal must contain:
 - i. The grounds of the appeal,
 - ii. The decision that is being appealed,
 - iii. Details that are relevant to the case, and
 - iv. The result the appellant is seeking.
- d. The grounds for appeal that are acceptable are:
 - i. The interpretation of the Elections Bye-Law or any of the issued guidelines used during the election is unreasonable;
 - ii. The correct procedure set out in the Elections Bye-Law or issued guidelines has not been followed;
 - iii. The Returning Officer has been prejudiced or biased;
 - iv. The Returning Officer failed to fully take into account the available evidence.

11. Response

- a. If a notice of appeal is received by the Panel, the Returning Officer or their nominee must respond in writing to the notice.
- b. The response must contain:
 - i. Whether or not the Returning Officer opposes the appellant's case, and if so the reasons why the case is opposed, and
 - ii. The reasons for which the decision that is contested was made.
- c. Written response must be sent to both the Panel and the appellant.
- d. If the Returning Officer opposes the appellant's case, then the case shall proceed to the adjudication of the Panel.

12. Hearings

- a. Before adjudicating a case, the Appeals Panel will hold at least one hearing on the matter. Hearings will be private.
- b. Both parties are entitled to make written submissions (in addition to the appeal and the response) as evidence to the hearing.
- c. Notice need not be given of a hearing in respect of a particular case if notice of when any hearings for a particular election will occur is given 14 days in advance.
- d. If a party fails to attend a hearing, the Chair may rule that the hearing proceed anyway if they are satisfied that the party has been sufficiently informed of the hearing and it is necessary to proceed with the hearing.
- e. Minutes must be kept of all hearings.

13. Proceedings at a hearing

- a. For the first part of a hearing, both parties are able to be present and will be available to be questioned by the members of the panel.
- b. If necessary, witnesses will be called by the Chair and they will be questioned by the Panel in the presence of the parties.
- c. At the conclusion of the evidence, the parties will withdraw. The Panel will discuss the case in light of the evidence and decide what course of action to take.

14. Adjudication decisions

- a. The Panel may decide to uphold or dismiss an appeal.
- b. The Panel must have regard to the adjudication guidance when making their decision.

- c. If the Panel dismiss an appeal, the decision of the Returning Officer will stand as a final decision.
- d. If the Panel uphold an appeal, the Panel will then decide what action needs to be taken. The Panel may:
 - i. Overturn the decision of the Returning Officer;
 - ii. Substitute all or part of the decision of the Returning Officer for any other valid decision which could have been made by the Returning Officer;
 - iii. Add to the decision of the Returning Officer anything that could have been contained within a decision of the Returning Officer.

Part three – Adjudication Guidance

When considering the Returning Officer's decision the panel should apply the following tests:

- Relevant factors – did the Returning Officer take into account all the relevant factors, and ignore all irrelevant factors?
- Irrationality – was the decision of the Returning Officer so unreasonable that it was not one a sensible person could have made?
- Procedural irregularity – was the decision of the Returning Officer so unfair or flawed that justice was clearly not done?

Procedural irregularity means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision making process. This will be a judgement for the panel to make but the following are examples of the types of things that could give rise to procedural irregularity:

- the Returning Officer making a decision without having given candidate a chance to put their side of the story;
- failing to give reasons for a decision.

If the panel are satisfied after applying the tests above that the Returning Officer's decision was incorrect, and no penalty should be applied to the appellant, then they should uphold the appeal and overturn the decision of the Returning Officer.

If the Panel believe that the Returning Officer has incorrectly decided the case, but that the appellant is not free from fault, they may uphold the appeal but amend the Returning Officer's decision to any other penalty that the Returning Officer could have issued. For example, if the Returning Officer did not disqualify a candidate, and the Panel believes the Returning Officer was being lenient, then the Panel could disqualify that candidate.

In all other cases the Panel should uphold the decision of the Returning Officer and dismiss the appeal.